

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

JAN 17 2008

COURT OF APPEALS
DIVISION TWO

IN RE ANDREW H.

) 2 CA-JV 2007-0059

) DEPARTMENT B

) MEMORANDUM DECISION

) Not for Publication

) Rule 28, Rules of Civil

) Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 17236701

Honorable Virginia C. Kelly, Judge

AFFIRMED

Barbara LaWall, Pima County Attorney
By Murdock Holloway

Tucson
Attorneys for State

Robert J. Hooker, Pima County Public Defender
By Susan C. L. Kelly

Tucson
Attorneys for Minor

E S P I N O S A, Judge.

¶1 The minor appellant, Andrew H., appeals from the juvenile court's written disposition order entered on July 23, 2007, continuing him on juvenile intensive probation supervision (JIPS) for an additional twelve months and ordering him placed at Canyon State Academy to participate in the Rites of Passage program there. Andrew contends the juvenile court abused its discretion in sending him to Canyon State Academy and extending his

intensive probation for twelve months because those consequences were disproportionate to the “minor probation violation” that had led to his most recent adjudication and the current disposition order.

¶2 A juvenile court has broad discretion in determining the proper disposition of a delinquent juvenile. *In re Maricopa County Juv. Action No. JV-510312*, 183 Ariz. 116, 118, 901 P.2d 464, 466 (App. 1995). We will not disturb a disposition order absent an abuse of the court’s discretion. *In re Themika M.*, 206 Ariz. 553, ¶ 5, 81 P.3d 344, 345 (App. 2003). In the analogous context of adult sentencing, an abuse of discretion occurs if the court acts arbitrarily or capriciously or fails to conduct an adequate investigation into the facts relevant to sentencing. *State v. Stotts*, 144 Ariz. 72, 87, 695 P.2d 1110, 1125 (1985). In a delinquency case, the juvenile court may also abuse its discretion by failing to consider the advisory guidelines established by the Arizona Supreme Court for the commitment of minors to the Arizona Department of Juvenile Corrections (ADJC), Ariz. Code of Jud. Admin. § 6-304(C). *See In re Melissa K.*, 197 Ariz. 491, ¶ 14, 4 P.3d 1034, 1038 (App. 2000). Neither event happened here, and we affirm.

¶3 Andrew was fourteen years old when he was first adjudicated delinquent in November 2005. In exchange for the dismissal of three other charges, he admitted committing third-degree burglary and possessing drug paraphernalia, both felony offenses. The juvenile court placed him on nine months’ standard probation in December 2005.

¶4 In the nineteen months between then and July 2007 when the juvenile court entered the disposition order from which he appeals, Andrew accrued two more delinquency

petitions, a third felony adjudication, four petitions to revoke his probation, and three warrants for his arrest.

¶5 As the prelude to his latest disposition hearing, Andrew was charged in an April 2007 delinquency petition with disorderly conduct (domestic violence) and in a June 2007 revocation petition with violating his probation by using marijuana, failing to complete required community service with the Community Renewal and Enrichment through Work (CREW) program, and having been suspended from the program. Pursuant to a plea agreement encompassing both petitions, Andrew admitted having failed to complete his obligations with CREW.

¶6 At the scheduled trial-review hearing at which Andrew entered his latest admission, he also sought to be released from detention. The comments made by his probation officer and the court in relation to that request also shed light on the court's subsequent disposition decision. The probation officer stated:

We're recommending that he be detained. Basically he was placed on probation just a little over a year ago for a Class 4 felony, and he's had six referrals since that time. We actually worked real hard to get him terminated successfully from JIPS. He had every opportunity to complete CREW.

Sometime in early May he was placed in an Open Inn shelter due to a lot of problems at home with his parents and he actually didn't do very well over there. He was eventually placed at the Vision Quest group home around May 25th, from which he ran on May 29th. Since he was picked up on the warrant in June, there was a positive urinalysis for marijuana, which is a concern.

We basically believe that he's a great risk. He's got a total of three warrants. And also I noticed that he was—he had

a short stint on the run last January but he eventually turned himself in to probation. . . .

I'm not sure about his situation at home. I was pretty much told by his mom throughout this last court involvement that she didn't want him to return home until he was placed in some kind of residential program. That's what the family was willing to do first, so I just feel that he didn't—we don't really have a placement from which he wouldn't run, and that's our main concern.

¶7 After hearing further comments from counsel, the juvenile court declined to order Andrew released pending his placement at Canyon State Academy, stating:

[W]e're going to keep you in detention until we can do the disposition and try to find an appropriate placement for you. *We all want to keep you out of the adult criminal system[,] and you still have some work to do on that.* . . . I think the most persuasive thing for the Court is the number of referrals since you were first placed on JIPS, and the flight risk issue . . .

(Emphasis added.)

¶8 The court's comments at the disposition hearing ten days later further refute Andrew's contention that the court's order was arbitrary or capricious. On that occasion the court stated:

First of all, the disposition today is not just for CREW, it's for—we are still going off your last felony conviction, which is why you're on probation in the first place. You've got three felonies and that's very unimpressive, and you have had many referrals to court. I think this is your twelfth time. You've had many services.

You are, frankly, in the Court's view, a fine candidate just to go to the Department of Juvenile Corrections right now and stay there until you're 18. Before the Court does that the

Court's going to give you an opportunity to go to Canyon State and see if you can figure out how to change your behavior.

. . . .

You've got three felonies and a dozen referrals to court because you can't conduct yourself appropriately on probation. You have been given the La Frontera program, you've been given the Cornerstone program, you've been given individual treatment, and all of the services of JIPS. You've been at Vision Quest. You've been given the opportunity on CREW, and here we are.

¶9 The minute entry from the disposition hearing reflects that, in reaching its decision, the juvenile court had expressly considered the supreme court's commitment guidelines, as *Melissa K.* requires. And the court's comments, which the record before us supports, show clearly that the court's decision was not arbitrary or capricious but considered, fully informed, and appropriate. The juvenile court did not abuse its discretion, and its disposition order is therefore affirmed.

PHILIP G. ESPINOSA, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge